HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION NO. 1762 of 1997

Petitioner Sammelal, son of Shri Jhaduram Kewat, aged about 45 years, Resident of Village Gavera-Basti, Tahsil Kathaghora, District Bilaspur (M.P.) (Now C.G.)

Versus

Respondents

1. South Eastern Coalfields Limited, Seepat Road, Bilaspur (M.P.) (Now C.G.)
2. Chief Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur (M.P.) (Now C.G.)
3. Personnel Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur (M.P.) (Now C.G.)
4. General Manager, South Eastern Coalfields Limited, Kusmunda Project, Bilaspur (M.P.) (Now C.G.)
5. Chief Personnel Manager, G.M. Office, Kusmunda Project, Post Kusmunda, Bilaspur (M.P.) (Now C.G.)
6. Additional Chief Mining Engineer, Kusmunda-Gavera, Bilaspur (M.P.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(SB : Hon'ble Shri Justice Satish K. Agnihotri)

Present :- Mr. R.K. Kesharwani, Advocate for the petitioner.
Mr. Vivek Verma, Advocate for the respondents.

ORDER
(Passed on this 24th day of July, 2007)

1. The petitioner was appointed vide order dated 22.1.1984 (Annexure P/I) as General Mazdoor Category-I on temporary period on daily wages basis.

2. According to learned counsel appearing for the petitioner, the petitioner had obtained training under Schedule-I from 24.1.84 to 31.1.84 (Annexure P/IV) and thereafter, services of the petitioner were discontinued. The petitioner kept waiting for six years and thereafter, he made a representation to the Personnel Director, S.E.C.L., Kusmunda Project, Bilaspur on 5.12.90 (Annexure P/V) and the second representation was made to the Commerce

Minister, Government of Madhya Pradesh, Bhopal on 12.6.94 (Annexure P/VI).

3. The petitioner has filed this petition on 9.4.97 after lapse of about 13 years, seeking a direction to the respondents to allow the petitioner to join his service and grant seniority w.e.f. 1984 and alternatively if the petitioner is not appointed, his son Jagdish Prasad may kindly be given appointment.

4. This writ petition deserves to be dismissed on two grounds. Firstly, there is unexplained inordinate delay of 13 years and secondly, appointment of the petitioner was on temporary basis on daily wages, de-horse the constitutional scheme of employment.

5. It is trite law that a person appointed on temporary basis on daily wages has no right to the post, as the appointment is de-hors the constitutional scheme of employment and not in accordance with the rules and regulations as framed under Article 309 of the Constitution of India.

6. It is well settled that High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic as the belated approach may have the effect of inflicting not only hardship as inconvenience but also injustice on other parties.

7. The Supreme Court in the case of **P.S. Sadasivaswamy Vs. State of Tamil Nadu**[1] observed as sunder :

> "It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and

who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

8. The Supreme Court in the case of **State of M.P. & others Vs. Nandlal Jaiswal and others**[2] further observed as under:

"Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactory explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasized time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.

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9. The Supreme Court in the case of **Burn Standard Co. Ltd. & others Vs. Dinabandhu Majumdar & another**[3] also observed as under:

> "The very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches."

10. The Supreme Court in the case of **Karnataka Power Corporation Ltd. through its Chairman & Managing Director & another vs. K. Thangappan & another**[4] observed as under:

> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad V. Chief Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably."

11. Thus, at this stage, the petitioner is not entitled to any relief, as he has no right to the post. The petitioner has slept over his right, if any, for more than 13 years.

12. As a result and for the above-stated reasons, this writ petition stands dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. AIR 1974 SC 2271
2. (1986) 4 SCC 566
3. (1995) 4 SCC 172
4. (2006) 4 SCC 322

B/-